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United States Attorney

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Attorneys for Federal Defendants
Petaluma Valley Hospital and
Fasih Hameed, M.D.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

A.M., a minor by and through his Guardian Ad
Litem; MARY MCQUINN; and MICHAEL
MCQUINN;

Plaintiffs,

v.

PETALUMA VALLEY HOSPITAL; ST.
JOSEPH HEALTH SYSTEM; ST. JOSEPH
HEALTH SYSTEM, DBA PETALUMA
VALLEY HOSPITAL; FASIH HAMEED, MD;
ANTHONY KOSINSKI MD; JULIE DIANE
CLARK, MD; VICTORIA ANQUE-
CABEZAS, RN; PAMELA ANN KOCH, RN;
VICTORIA LASS, RN; S. MASTERSON, RN;
DOES 1 through 20, inclusive,

Defendants.

Case No.

NOTICE OF REMOVAL OF CIVIL ACTION

**Superior Court of Sonoma County,
Hall of Justice
600 Administration Drive, Room 107J
Santa Rosa, CA 95403**

See Proof of Service for Service List

NOTICE OF REMOVAL

A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al

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PLEASE TAKE NOTICE that on this day case no. SCV 254872 pending before the Sonoma County Superior Court, Hall of Justice, Civil Unlimited Jurisdiction is being removed to the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1442 on behalf of federal defendants Petaluma Valley Hospital ("PVH") and Fasih Hameed, M.D. ("Hameed"). Upon direction by the Attorney General of the United States and pursuant to 28 U.S.C. § 1446, the undersigned attorneys hereby present the following facts to the Judges of the United States District Court for the Northern District of California.

1. On January 14, 2014, plaintiff A.M., a minor by and through his Guardian Ad Litem, Mary McQuinn and Michael McQuinn, filed a summons and complaint in the Sonoma County Superior Court. The complaint was filed against defendants PVH et al. Plaintiff alleged that between March 2012 and October 2012, defendant Hameed failed to properly diagnose and treat his mother, plaintiff Mary McQuinn, during prenatal care and delivery. As a result, plaintiff A.M. alleged that he sustained permanent and severe brain damage to all cortexes of his brain. (See Exhibit 1 – summons and complaint).

2. On August 22, 2014, the United States Attorney's Office received notification from the Department of Health and Human Services ("DHHS") regarding this pending lawsuit. The summons and complaint filed in the Sonoma County Superior Court, Hall of Justice, Civil Unlimited Jurisdiction has not been served on the United States Attorney's Office as required by Rule 4(i)(1)(A)(i)(ii), Fed. R. Civ. P.

3. This action must be removed to the federal district court because this action is against a federally supported health center and a health center doctor. Pursuant to the Federal Tort Claims Act ("FTCA") and the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)-(n), Petaluma Health Centers are deemed eligible for FTCA malpractice coverage and its employees are covered under the FTCA on January 1, 2012. Further, Fasih Hameed, M.D. is an employee of the health center and

NOTICE OF REMOVAL

A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al

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1 was acting within the scope of his employment at all times material to such alleged incidents. (See
2 Certification of A. Tse).

3 4. Upon certification by the Attorney General, this action shall be removed to the District Court
4 any time prior to trial. Pursuant to written delegation from Melinda Haag, the duly appointed United
5 States Attorney for the Northern District of California, the Chief of the Civil Division has been
6 authorized to exercise on behalf of the United States Attorney the authority vested in him by the
7 Attorney General, pursuant to 28 C.F.R. § 15.4. The Chief of the Civil Division has certified that Fasih
8 Hameed, M.D. was acting within the course and scope of his employment with PVH, which is deemed
9 eligible for FTCA malpractice coverage. *See* Certification Pursuant to 28 U.S.C. § 2679(d). This
10 certification is conclusive for purposes of removal. 28 U.S.C. § 2679(d)(2).

11 5. Upon removal the United States is automatically substituted for federal defendants PVH and
12 Hameed and this action will proceed as an action against the United States of America pursuant to 28
13 U.S.C. § 1442.

14 6. This action is one arising under the Constitution and Laws of the United States, and it is
15 therefore an action over which the District Courts of the United States have original jurisdiction. A civil
16 action in state court seeking damages from federal officials for acts taken under color of federal office
17 may be removed to federal court provided that the defendant has a colorable federal defense or can
18 otherwise articulate a connection between the performance of his duties and the acts or omissions
19 alleged. *See* 28 U.S.C. § 1331. It is removable to this court pursuant to 28 U.S.C. § 1441(a), (b) (1988).

20 7. A federal defendant removing under Section 1442 must demonstrate three things - that it is a
21 “person” within the meaning of the statute, that there is a “casual nexus” between its actions and
22 plaintiff’s claim, and that it can assert a “colorable federal defense.” *Durham v. Lockheed*, 445 F.3d
23 1247, 1251 (9th Cir. 2006). Here, the federal defendant has met the three-part test for removal set forth
24 in *Durham*. Moreover, with respect to the third requirement, “colorable” is interpreted broadly because
25 “one of the most important reasons for removal is to have the validity of the defense of official
26 immunity tried in a federal court.” *Jefferson County, Ala. v. Acker*, 527 U.S. 423, 431 (1999).

28 **NOTICE OF REMOVAL**

A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al

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1 8. A copy of this Notice is being filed with the Clerk of the Sonoma County Superior Court.
2 This filing will automatically effect the removal action described above in its entirety to this Court for
3 all future proceedings pursuant to 28 U.S.C. § 1446(d).
4

5 Respectfully submitted,
6

7 MELINDA HAAG
8 United States Attorney

9 Dated: August 29, 2014

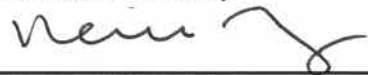

10 NEILL T. TSENG
11 Attorneys for Federal Defendants
12 Petaluma Valley Hospital and
13 Fasih Hameed, M.D.
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EXHIBIT 1

NOTICE TO DEFENDANT: PETALUMA VALLEY HOSPITAL; ST. JOSEPH AL DEMAÑADO; JOSEPH HEALTH SYSTEM; ST. JOSEPH HEALTH SYSTEM; DBA PETALUMA VALLEY HOSPITAL; HASIH KAMBER, M.D.; ANTHONY ROBINSKI, M.D.; JULIE DIANE CLARK, M.D.; VICTORIA ANQUE-CABEZAS, R.N.; PAMELA ANN KOCH, R.N.; VICTORIA LASS, R.N.; S. MASTERSON, R.N.; and DOES 1 - 20, inclusive.

FEB 14 2014

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

YOU ARE BEING SUED BY PLAINTIFF: A [REDACTED] [REDACTED FOR] a minor
(LO ESTÁ DEMANDANDO EL DEMANDANTE by and through his
Guardian Ad Litem: MARY McQUINN; and MICHAEL McQUINN.

You have 30 CALENDAR DAYS after the summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff or their lawyer. If you do not respond, the court will decide the case for you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can ask for your responses. You can find these court forms and more information about the County Court Online Backlog Project at www.courtsonline.com/backlog, your county law library, or the court house directly. If you cannot find the forms, ask the court clerk for help. **Information:** If you do not file your responses on time, you may lose the case by default, and your money, property, and property may be taken without further warning from the court.

[illegible][illegible]

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of Sonoma
600 Administration Drive

CASPRIMER:
(continued)

5xv 25487

Santa Rosa 95403

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Theo J. Emerson (SBN 209183)

Emison Hullverson LLP.

1005 Sansome Street, Suite 330

San Francisco, CA 94111 JOSE O. GUILLEN

DATE: _____

2014年12月31日

Clerk, by
(Signature)

Deputy
XAB/10/10

(For use of service of legal summons, Use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Prob1 of Service of Summons, (POS-01D)).

NOTICE TO THE PERSON SERVED: You are served.

1. ☒ as an individual defendant

2. ☐ as the person used under the fictitious name of (specify):

2 ☐ on behalf of (specify):

under: ☐ GCP 416.10 (corporation) ☐ GCP 416.80 (minor)
☐ GCP 416.20 (defunct corporation) ☐ GCP 416.70 (conservatee)
☐ GCP 416.40 (association or partnership) ☐ GCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Form Adopted for McKinney-Vento
Judicial Council of California
BIA-100 (Rev. July 1, 2009)

SUMMONS

Legal
Solutions
Co. Inc.

Code of Criminal Procedure, 1973 412201405

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): THOMAS J. ELLISON (SBN 209183) Ellison Hallvarsson LLP 1005 Sansome Street, Suite 330 San Francisco, CA 94111 TELEPHONE NO.: 415-434-2111 FAX NO.: 415-434-2112 ATTORNEY'S MAILING ADDRESS: 600 Administration Drive Santa Rosa 95403 COUNTY: SAN FRANCISCO		FOR COUNTY JUDGE ONLY ENDORSED FILED JAN 14 2014 SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA
CASE NAME: McQuinn v. Petaluma Valley Hospital, et.		CASE NUMBER: CV 254872 JUDGE: DEPT.:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PUP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (34) <input type="checkbox"/> Product liability (24) <input checked="" type="checkbox"/> Medical malpractice (43) <input type="checkbox"/> Other PUP/DWD (23) Non-PUP/DWD (Other) Tort <input type="checkbox"/> Business torts/other business practice (37) <input type="checkbox"/> Civil rights (33) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PUP/DWD tort (25) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (16) <input type="checkbox"/> Other contract (07) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Partition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Artificial/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (16) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxics tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice relating difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **Five (Med Neg-ALMed; Med Neg/NIEE-Med; Med Neg/NIEE Michael; LOC-Med; LOC-Michael)**

6. This case ☐ is ☒ is not a class action suit.

8. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
 Date: **January 14, 2014**
 Filed: **J. Ellison (SBN 209183)**

NOTICE

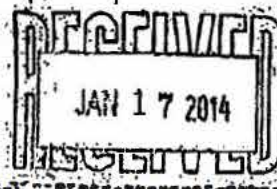
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collection case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form adopted for preliminary use
 Judicial Council of California
 October 1997, July 2007

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.20, 3.220, 3.400-3.403, 3.740
 Cal. Standards of Judicial Administration, 10.0.1.10

BY FAX



ENDORSED
FILED
JAN 14 2014

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

THEO J. EMMISON (SBN: 209183)
EMMISON HULLVERSON LLP
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San Francisco, CA 94111
Tel: (415) 434-2111
Fax: (415) 434-2112
Attorneys for Plaintiffs

P

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA

REDACTED M REDACTED FOR a minor by and through his
Guardian Ad Litem;
MARY McQUINN; and
MICHAEL McQUINN;

Plaintiffs,

VS.

PETALUMA VALLEY HOSPITAL;
ST. JOSEPH HEALTH SYSTEM;
ST. JOSEPH HEALTH SYSTEM, DBA
PETALUMA VALLEY HOSPITAL;
FASIH HAMEED, M.D.;
ANTHONY KOSINSKI, M.D.;
JULIE DIANE CLARK, M.D.;
VICTORIA ANQUE-CABEZAS, R.N.;
PAMBLA ANN KOCH, R.N.;
VICTORIA LASS, R.N.;
S. MASTERSON, R.N.; and
DOES 1 - 20, inclusive;

Defendants.

Case No.: SCV254872

COMPLAINT FOR DAMAGES FOR:

1. REDACTED FOR M REDACTED FOR GENCE;
2. MEDICAL NEGLIGENCE / NIED;
MARY McQUINN
3. MEDICAL NEGLIGENCE / NIED;
MICHAEL McQUINN
4. LOSS OF CONSORTIUM;
MARY McQUINN
5. LOSS OF CONSORTIUM;
MICHAEL McQUINN

JURY TRIAL DEMANDED

Plaintiffs REDACTED M REDACTED FOR a minor by and through his Guardian Ad Litem, MARY
McQUINN, and MICHAEL McQUINN (collectively, "Plaintiffs") allege as follows:

PARTIES

1. Plaintiff REDACTED M REDACTED FOR is a minor and resides with his parents in the City of Petaluma,

COMPLAINT

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ATTORNEYS AT LAW

ST FAX

Emilio Ramirez, LLP
ATTORNEYS AT LAW

County of Sonoma, State of California. An application will be made to appoint a Guardian Ad
Litem for Plaintiff A [REDACTED] M [REDACTED] A [REDACTED] date of birth is [REDACTED FOR PRIVACY]

2. Plaintiffs Mary McQuinn and Michael McQuinn reside in the City of Petaluma, County
of Sonoma, State of California. At all relevant times, Mary and Michael were, and presently are,
married. Mary and Michael are A [REDACTED]'s parents and are responsible for his care.

3. At all relevant times, defendants Petaluma Valley Hospital, St. Joseph Health System,
and St. Joseph Health System DBA Petaluma Valley Hospital, were and now are business
organizations engaged, in the County of Sonoma, State of California, in the business of owning,
operating, and maintaining medical centers, health care facilities, and/or hospitals and employing
physicians, surgeons, nurses and other health care providers practicing their profession at said
hospital.

4. At all relevant times, defendants Fasih Hameed, M.D., Anthony Kosinski, M.D., and
Julie Diane Clark, M.D., were and now are physicians engaged in the practice of medicine in the
County of Sonoma, State of California.

5. At all relevant times, defendants Victoria Anque-Cabezas, R.N., Pamela Ann Koch, R.N.,
Victoria Lass, R.N., and S. Masterson, R.N., were and now are registered nurses engaged in the
practice of nursing in the County of Sonoma, State of California.

6. Plaintiffs are unaware of the true names and capacities of the defendants sued herein as
DOES 1 – 20, inclusive, and therefore sue these defendants by such fictitious names pursuant to
Code of Civil Procedure Section 474. Plaintiffs will amend this Complaint to allege their true
names and capacities when ascertained.

7. Reference to "DEFENDANT" or "DEFENDANTS" shall refer individually and
collectively to each and every specifically and fictitiously named defendant.

8. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times,
each and every DEFENDANT was the actual or ostensible authorized agent or agent by
ratification, principal, servant, master, permittee, employee, employer, partner, alter ego, or joint
venturer of, and/or was working in concert with, each and every other DEFENDANT, and in
doing the things alleged, each and every DEFENDANT was acting within the course and scope

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1 of such agency, permission, employment, partnership, concerted activity, and/or other
2 relationship. To the extent certain acts and/or omissions were perpetrated by certain
3 defendant(s), each and every other DEFENDANT authorized, consented to, confirmed,
4 controlled and/or ratified each and every such act and/or omission.

5 9. Plaintiffs are informed and believe, and on that basis allege, that each and every
6 DEFENDANT is responsible, negligently, intentionally, or in some other actionable manner, for
7 the events and happenings referred to herein, that each Plaintiff's damages were directly and
8 proximately caused by each and every DEFENDANT, that the damages are within the
9 jurisdictional limits of this Court, and that Plaintiffs are entitled to the relief requested herein
10 against each and every DEFENDANT.

11 TIMELINESS OF THE COMPLAINT

12 10. Plaintiff A [REDACTED] M [REDACTED] first suffered appreciable harm on the day of his birth [REDACTED FOR PRIVACY]

13 [REDACTED FOR PRIVACY] The filing of this Complaint within three years of that date and well before his eighth
14 birthday satisfies the statute of limitations set forth in CCP Section 340.5. With respect to A [REDACTED]
15 M [REDACTED], this Complaint is timely filed.

16 11. Within 90 days of the expiration of the relevant statute of limitation that governs Plaintiff
17 Mary McQuinn's and Michael McQuinn's respective claims, Plaintiffs caused to be sent
18 appropriate notices pursuant to the provision of CCP Section 364 to DEFENDANTS and/or their
19 authorized agents. In accord with relevant case law, the sending of such notices operated to
20 extend the statute of limitations set forth in CCP Section 340.5. This Complaint is timely filed
21 within the time prescribed by law after the sending of such notices.

22 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

23 12. Beginning in March 2012, and continuing through and including the date of A [REDACTED]
24 M [REDACTED] s birth on [REDACTED FOR PRIVACY] Mary McQuinn was a patient of DEFENDANTS and
25 consulted with, employed, and contracted with DEFENDANTS to provide all medical diagnosis,
26 care, and treatment to Mary and A [REDACTED] M [REDACTED] in connection with Mary's pregnancy with, and
27 labor and delivery of, A [REDACTED]

28 13. Pursuant to that physician-patient relationship, employment, and contract, at all relevant

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1 times, DEFENDANTS undertook to provide for consideration, and were obligated to provide, all
2 medical diagnosis, care and treatment to Mary and A [REDACTED] M [REDACTED] consistent with the
3 applicable standards of care necessary to maximize the protection of both Mary McQuinn and
4 her unborn child, A [REDACTED] M [REDACTED] and to maximize the possibility that A [REDACTED] M [REDACTED] would
5 be born without avoidable injury.

6 14. At all relevant times DEFENDANTS negligently failed to exercise the proper degree of
7 skill, knowledge and care in their medical diagnosis, care and treatment of Mary and A [REDACTED]
8 M [REDACTED]

9 15. Specifically, and without limitation, at around 4:30 a.m., on [REDACTED FOR PRIVACY] Mary
10 McQuinn arrived at Petaluma Valley Hospital in labor. Fetal monitoring was connected to
11 monitor Mary's unborn son, A [REDACTED] M [REDACTED]. At or before 5:30 a.m., the fetal monitoring
12 reflected that A [REDACTED] was in severe distress and that an emergency cesarean was necessary. The
13 severity of A [REDACTED]'s distress, however, was initially misread as less severe than it in fact was.
14 That negligent interpretation of A [REDACTED]'s distress level caused unnecessary and avoidable delay in
15 the performance of a cesarean.

16 16. Roughly 20 minutes later, at about 5:50 a.m., as A [REDACTED]'s level of distress remained
17 severe, the Petaluma Valley Hospital nurse staff informed the attending doctor, defendant Dr.
18 Hameed, that he needed to call for a stat (i.e., emergency) cesarean. As stated in the medical
19 record:

20
21 5:30 a.m.: "Encouraged Dr. Hameed to call for c/s [i.e., a
22 cesarean], my thoughts were abrupt. [...] I explained that I
23 thought as soon as Dr. Kosinski arrived he would call a stat c/s."

24 17. Despite the nursing staff's urging that Dr. Hameed call for a cesarean, Dr. Hameed did
25 not do so, causing additional, unnecessary and avoidable delay.

26 18. Thirty minutes later, at about 6:00 a.m., the nursing notes reflect that the nurse got tired of
27 waiting for Dr. Hameed to call Dr. Kosinski and undertook to do so herself:

28 ///

Emerson B. Universal, P.
 ATTORNEYS AT LAW

6:00 a.m.: "After paging Dr. Kosinski to find out his ETA, he stated he didn't know about this patient. I handed the phone to Dr. Hameed and they spoke. At that time Dr. Clark arrived on the unit to see her own patients and Dr. Hameed consulted with her. C/S was called and patient was consented. [...] Pt [i.e., patient] being educated about possible C/S by Dr. Hameed. Awaiting arrival of Dr. Kosinski. [...] Called for Respiratory [sic] and Pedt to stand by for urgent C/S."

19. Despite this clear indication that a cesarean was ordered by physicians at Petaluma Valley Hospital at 6:00a.m., for reasons not known at this time, Mary still was not taken for cesarean, causing yet more unnecessary and avoidable delay.

20. Ten minutes later, the nurses paged Dr. Kosinski yet again to determine his ETA for the urgent cesarean:

6:10a.m.: "I paged Dr. Kosinski to determine ETA."

21. Five minutes later, at 6:15a.m., there still was no progress towards a cesarean:

6:15a.m.: "RN started IVF to give IV bolus. Dr. Hameed informed to call Dr. Kosinski. To review strip and be here for possible c/section."

22. Fifteen minutes later, at 6:30a.m., A[REDACTED] was still in severe distress. Yet still no progress had been made towards a cesarean. The staff nurse again instructed Dr. Hameed to take action - to call Dr. Kosinski in for the cesarean. Dr. Hameed responded with a shocking statement in light of the severe and deteriorating distress of Mary's unborn son A[REDACTED].

6:30a.m.: "RN Angus-Cabezas told Dr. Hameed need to call Dr. Kosinski in for possible C/S. Dr. Hameed said he does not want to bother him."

23. After another fifteen minutes, at 6:45a.m., the nurse was still urging Dr. Hameed to take action - to call Dr. Kosinski in to perform a cesarean:

6:45a.m.: "RN Anque asked Dr. Hameed to place FSE to monitor FHR better at that time more clear fluid came out but FSE not on. I asked him to call Dr. Kosinski in or somebody that can do surgery."

EmisonHulterson, L.P.
ATTORNEYS AT LAW

24. Yet as late as 7:00a.m., the records reflect Dr. Kosinski was still not on scene. At that time, the records reflect that Dr. Clark returned to Mary's bedside and at last took Mary in for cesarean around 7:15a.m.

25. In sum, more than two and a half hours passed from the time a cesarean became necessary to the time a cesarean was actually performed. DEFENDANTS' negligence caused that inexcusable, unnecessary and avoidable delay.

26. DEFENDANTS' negligence includes, but is not limited to: (i) failing to timely recognize the need for an emergency cesarean; (ii) failing to timely perform an emergency cesarean; and (iii) refusing to timely call qualified physicians to the hospital to perform the emergency cesarean.

FIRST CAUSE OF ACTION

MEDICAL NEGLIGENCE

[Plaintiff A [REDACTED] M [REDACTED] against all DEFENDANTS]

27. Plaintiff A [REDACTED] M [REDACTED] re-alleges and incorporates by this reference all preceding paragraphs of this Complaint as though set forth here in their entirety.

28. Based on the foregoing, DEFENDANTS owed a duty to A [REDACTED] M [REDACTED] to use the proper degree of skill, knowledge and care in their medical diagnosis, care and treatment of Mary and A [REDACTED] M [REDACTED] in connection with Mary's pregnancy with, and labor and delivery of, A [REDACTED].

29. Based on the foregoing, DEFENDANTS negligently breached the duty of care they owed to A [REDACTED] M [REDACTED].

30. DEFENDANTS' negligence was a substantial factor in causing harm to A [REDACTED] M [REDACTED].

31. Specifically, and without limitation, as a direct and proximate result of DEFENDANTS' negligent acts, conduct, and omissions:

a. Plaintiff A [REDACTED] M [REDACTED] suffered permanent, severe and avoidable physical, neurological, and emotional injuries, including but not limited to severe brain damage to all cortexes of his brain;

b. A [REDACTED] M [REDACTED] has incurred, and will continue to incur, all past and future

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1 economic damages allowed by law in amounts according to proof at trial, including but not
2 limited to: (i) past and future medical and related expenses for physicians, surgeons, hospital
3 care, and other medical services and supplies, (ii) past and future expenses for specialized
4 education, teaching, training, cognitive and developmental therapies, psychological care, and
5 home care, and (iii) future economic damages for lost earning capacity and loss of ability to
6 provide household services; and

7 c. Plaintiff A [REDACTED] M [REDACTED] has incurred and will continue to incur all past and
8 future non-economic damages allowed by law in amounts according to proof at trial, including
9 but not limited to past and future damages for physical pain, mental anguish and emotional
10 distress, frustration, annoyance, anger, fear, worry, embarrassment, discomfort, and loss of
11 enjoyment of life.

12 SECOND CAUSE OF ACTION

13 MEDICAL NEGLIGENCE: NIED

14 [Plaintiff Mary McQuinn against all DEFENDANTS]

15 32. Plaintiff Mary McQuinn re-alleges and incorporates by this reference all preceding
16 paragraphs of this Complaint as though set forth here in their entirety.

17 33. Because of the physical and emotional connection between Mary McQuinn and her
18 unborn son, A [REDACTED] M [REDACTED] DEFENDANTS knew, or should have known, that negligence
19 causing physical injury to A [REDACTED] would also cause severe mental and emotional injury, distress,
20 and suffering to Mary.

21 34. Based on the foregoing, DEFENDANTS owed a duty to Mary McQuinn to use the
22 proper degree of skill, knowledge and care in their medical diagnosis, care and treatment of
23 Mary and A [REDACTED] M [REDACTED] in connection with Mary's pregnancy with, and labor and delivery of,
24 A [REDACTED] to avoid negligently inflicting physical injury upon A [REDACTED] and thereby avoid negligently
25 inflicting emotional injury on Mary.

26 35. Based on the foregoing, DEFENDANTS negligently breached the duty of care they owed
27 to Mary McQuinn.

28 36. DEFENDANTS' negligence was a substantial factor in causing harm to Mary McQuinn.

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37. Specifically, and without limitation, as a direct and proximate result of DEFENDANTS' negligent acts, conduct, and omissions:

- a. Mary McQuinn suffered and continues to suffer severe emotional distress;
- b. Mary McQuinn has incurred, and will continue to incur, all past and future economic damages allowed by law in amounts according to proof at trial; and
- c. Mary McQuinn has incurred and will continue to incur all past and future non-economic damages allowed by law in amounts according to proof at trial.

THIRD CAUSE OF ACTION

MEDICAL NEGLIGENCE: NIED

[Plaintiff Michael McQuinn against all DEFENDANTS]

38. Plaintiff Michael McQuinn re-alleges and incorporates by this reference all preceding paragraphs of this Complaint as though set forth here in their entirety.

39. DEFENDANTS knew, or should have known, that negligence causing physical injury to A [REDACTED] and emotional injury to Mary would also cause severe mental and emotional injury, distress, and suffering to Michael because:

- a. the physician-patient, and contractual, relationship between DEFENDANTS and Mary McQuinn directly implicated Michael McQuinn's interests as Mary's husband and the father of their unborn son, A [REDACTED];
- b. the physician-patient, and contractual, relationship between DEFENDANTS and Mary McQuinn also directly implicated the reproductive efforts of Mary and Michael McQuinn in which Michael had a personal interest; and
- c. Michael McQuinn was a third-party beneficiary of Mary McQuinn's contract with

DEFENDANTS to provide all medical diagnosis, care, and treatment to Mary and A [REDACTED] M [REDACTED] in connection with Mary's pregnancy with, and labor and delivery of, A [REDACTED]

40. Based on the foregoing, DEFENDANTS owed a duty to Michael McQuinn to use the proper degree of skill, knowledge and care in their medical diagnosis, care and treatment of Mary and A [REDACTED] in connection with Mary's pregnancy with, and labor and delivery of, A [REDACTED] to avoid negligently inflicting physical injury upon A [REDACTED] and emotional injury on Mary,

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1 and thereby avoid negligently inflicting emotional injury on Michael.

2 41. Based on the foregoing, DEFENDANTS negligently breached the duty of care they owed
3 to Michael McQuinn.

4 42. DEFENDANTS' negligence was a substantial factor in causing harm to Michael
5 McQuinn.

6 43. Specifically, and without limitation, as a direct and proximate result of DEFENDANTS'
7 negligent acts, conduct, and omissions:

8 a. Michael McQuinn suffered and continues to suffer severe emotional distress;

9 b. Michael McQuinn has incurred, and will continue to incur, all past and future
10 economic damages allowed by law in amounts according to proof at trial; and

11 c. Michael McQuinn has incurred and will continue to incur all past and future non-
12 economic damages allowed by law in amounts according to proof at trial.

13 FOURTH CAUSE OF ACTION

14 LOSS OF CONSORTIUM

15 [Plaintiff Mary McQuinn against all DEFENDANTS]

16 44. Plaintiff Mary McQuinn re-alleges and incorporates by this reference all preceding
17 paragraphs of this Complaint as though set forth here in their entirety.

18 45. As a further direct and proximate result of DEFENDANTS' negligent acts, conduct, and
19 omissions and the resulting emotional injury to her husband Michael McQuinn, Plaintiff Mary
20 McQuinn suffered the past and future loss of all elements of her husband's consortium, all to her
21 damage in amounts according to proof at trial.

22 FIFTH CAUSE OF ACTION

23 LOSS OF CONSORTIUM

24 [Plaintiff Michael McQuinn against all DEFENDANTS]

25 46. Plaintiff Michael McQuinn re-alleges and incorporates by this reference all preceding
26 paragraphs of this Complaint as though set forth here in their entirety.

27 47. As a further direct and proximate result of DEFENDANTS' negligent acts, conduct, and
28 omissions and the resulting emotional injury to his wife Mary McQuinn, Plaintiff Michael

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McQuinn suffered the past and future loss of all elements of his wife's consortium, all to his damage in amounts according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS, and each of them, jointly and severally, as follows:

First Cause of Action: Medical Negligence (A. M. McQuinn):

1. For past and future economic damages according to proof at trial;
2. For past and future non-economic damages according to proof at trial;
3. For costs of suit;
4. For pre-judgment interest as allowed by law; and,
5. For such other and further relief as the Court deems just and proper.

Second Cause of Action: Medical Negligence / NIED (Mary McQuinn):

1. For past and future economic damages according to proof at trial;
2. For past and future non-economic damages according to proof at trial;
3. For costs of suit;
4. For pre-judgment interest as allowed by law; and,
5. For such other and further relief as the Court deems just and proper.

Third Cause of Action: Medical Negligence / NIED (Michael McQuinn):

1. For past and future economic damages according to proof at trial;
2. For past and future non-economic damages according to proof at trial;
3. For costs of suit;
4. For pre-judgment interest as allowed by law; and,
5. For such other and further relief as the Court deems just and proper.

Fourth Cause of Action: Loss of Consortium (Mary McQuinn):

1. For past and future economic damages according to proof at trial;
2. For past and future non-economic damages according to proof at trial;
3. For costs of suit;
4. For pre-judgment interest as allowed by law; and,

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5. For such other and further relief as the Court deems just and proper.

Fifth Cause of Action: Loss of Consortium (Michael McQuinn):

1. For past and future economic damages according to proof trial;
2. For past and future non-economic damages according to proof at trial;
3. For costs of suit;
4. For pre-judgment interest as allowed by law; and,
5. For such other and further relief as the Court deems just and proper.

Dated: January 14, 2014

EMISON HULLVERSION LLP

By: 

Theo J. Emison III
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on their causes of action against DEFENDANTS:

Dated: January 14, 2014

EMISON HULLVERSION LLP

By: 

Theo J. Emison III
Attorney for Plaintiffs